

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

In Re:)
DEBRA JEAN SILVA,) CHAPTER 7
Debtor.) CASE NO. 09-19222-WCH

SOVEREIGN BANK,)
Plaintiff,)
v.)
ROBERT B. OUR CO., INC., ROCKLAND)
TRUST COMPANY, EDWARD E. VEARA,)
HALLSMITH-SYSCO FOOD SERVICES,)
LLC, ROYAL BANK AMERICA) ADVERSARY PROCEEDING
LEASING, JOHN F. NOONS, INC., THE) CASE NO. 10-01205
COMMONWEALTH OF)
MASSACHUSETTS, NICKERSON)
LUMBER COMPANY, CAPE TIP)
SEAFOOD, INC., TIMEPAYMENT)
CORP., 85-87 SHANKPAINTER ROAD,)
LLC, CLEMENT A. SILVA, individually)
and as Trustee of the CLEMDEB REALTY)
TRUST, DEBRA J. SILVA, as Trustee of)
the CLEMDEB REALTY TRUST, and)
STEPHEN E. SHAMBAN, as Chapter 7)
Trustee,)
Defendants.)
_____)

CHAPTER 7 TRUSTEE, STEPHEN E. SHAMBAN'S,
MOTION TO SUBSTITUTE AS PLAINTIFF

Now comes the Chapter 7 Trustee, Stephen E. Shamban, and pursuant to Federal Rule of Civil Procedure 25(c) and Federal Rule of Bankruptcy Procedure 7025 respectfully requests that this Honorable Court substitute the Chapter 7 Trustee as the Plaintiff in this adversary proceeding and as grounds, states:

1. Stephen E. Shamban is the duly appointed Chapter 7 Trustee of the Bankruptcy Estate of Debra Jean Silva, Debtor.
2. On July 28, 2010, Sovereign Bank filed this adversary proceeding to deposit surplus proceeds from a foreclosure sale on real estate located at 85-87 Shank Painter Road, Provincetown, Massachusetts and require the defendants to resolve their claims to the surplus proceeds.
3. The Complaint named as defendants nine entities, two individuals in their individual and capacities as trustees of certain trusts, one individual and the Chapter 7 Trustee.
4. All the named defendants had an interest in the real estate located at 85-87 Shank Painter Road prior to the filing of the Chapter 7 petition and may have a claim to the surplus proceeds.
5. Each defendant's claim to the surplus proceeds is subject to its validity and priority, and certain liens may be subject to avoidance by the Chapter 7 Trustee.
6. The Defendants the Robert B. Our Co., Inc., Rockland Trust Company, the Commonwealth of Massachusetts and the Chapter 7 Trustee filed separate Answers to the Complaint stating a claim to the surplus proceeds.
7. Hallsmith-Sysco Food Services, Inc., LLC disclaimed its interest in the surplus proceeds.

8. The Defendants Edward E. Veara, Royal Bank America Leasing, John F. Noons, Inc., Nickerson Lumber Company, Cape Tip Seafood, Inc., Timepayment Corp., 85-87 Shankpainter Road, LLC, Clement A. Silva and Debra J. Silva have failed to file an answer to the Complaint, or otherwise appear and defend.

9. The Bankruptcy Estate has an interest in the Surplus and is entitled to part or all of the Surplus whereas mortgages, liens and other claims may be subject to avoidance by the Chapter 7 Trustee pursuant to 11 U.S.C. § 544 and other relevant provisions of the Code.

10. On September 17, 2010, Sovereign Bank filed a Motion to Dismiss as Plaintiff and dismissal of Sovereign Bank may result in extinguishment of the adversary proceeding.

11. The continuance of the adversary proceeding is in the best interest of the Bankruptcy Estate and the remaining Defendants because disputes exist as to the allocation and entitlement to the surplus proceeds requiring adjudication by this Court.

12. The Bankruptcy Estate has an interest in having the claims and disputes between the Chapter 7 Trustee and the each Defendant adjudicated.

13. The allowance of the substitution of the Chapter 7 Trustee as Plaintiff will result in judicial economy and dispense with the need for the filing of additional and separate adversary

proceedings between and among the Defendants and allow for the distribution of the surplus proceeds by the Court to the appropriate party or parties.

WHEREFORE, Stephen E. Shamban, Chapter 7 Trustee, respectfully requests that this Honorable Court:

- a. Enter an order substituting the Chapter 7 Trustee, Stephen E. Shamban, as Plaintiff in this adversary proceeding; and
- b. Enter such other and further relief as may be just and proper.

Respectfully submitted,
For the Defendant,
Stephen E. Shamban, Chapter 7 Trustee,
By his Attorneys,

Dated: October 4, 2010

By: /s/ Jenny L Redden
Jenny L. Redden, Esquire, BBO #645667
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CERTIFICATE OF SERVICE

I, Jenny L. Redden, counsel to the Plaintiff, Stephen E. Shamban, Chapter 7 Trustee, herein certify that on October 4, 2010, I electronically filed with the Clerk of the Bankruptcy Court: CHAPTER 7 TRUSTEE, STEPHEN E. SHAMBAN'S, MOTION TO SUBSTITUTE AS PLAINTIFF and served same in the following manner upon the interested parties:

E-Mail Service: via the Court's CM/ECF system which sent notification of such filing to the following:

David T. Mazzuchelli mazzucheld@dor.state.ma.us
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Mail Service: via Regular, first-class United States mail, postage fully pre-paid, addressed to:

85-87 Shank Painter Road, LLC
85 Shank Painter Road
Provincetown, MA 02657-1344

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John F. Noons, Inc.
6 Noons Heights Road
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/s/ *Jenny L Redden*